



Tools to Enhance Compliance with Freedom of Information Act: What it Means to You!

**2008 Data Protection Seminar
TMA Privacy Office**



Purpose



- ★ Provide guidance on the rules and procedures governing the Freedom of Information Act (FOIA)

Objectives



- ★ This presentation will:
 - Explain the purpose of FOIA
 - Outline FOIA request exemptions
 - Describe the OPEN Government Act of 2007
 - Explain what FOIA means to **you**

Background



★ Freedom of Information

- Section 552 of Title 5, United States Code (U.S.C.), known as the Freedom of Information Act, enacted in 1966
- Individuals utilize FOIA to obtain federal records
- Revolutionary; Sweden and Finland had similar laws
- Reversed burden of proof from requestor to government
- Provides clear guidelines
- Amendments in 1974, 1976, 1986, 1996, and 2007 refined the law

Applicability of Statutes



- ★ Federal Executive Branch departments, agencies, and offices
- ★ Federal regulatory agencies and federal corporations
- ★ Not subject to the Federal FOIA
 - Congress
 - Federal Courts
 - Executive Office of the President
 - State and local governments

Access Rights Under the Law



- ★ FOIA makes Federal records available to the public, including:
 - Private parties
 - Government officials
 - Congress
 - Foreign governments
 - Foreign individuals
 - Foreign organizations

Exemptions



- ★ Nine exemptions for **NOT releasing** records
 - Cited in the Act as 5 U.S.C. § 552(b)(1) through (b)(9)
- ★ Exemptions under the FOIA Law
 - (b)(1)—National security
 - (b)(2)—Internal practices
 - (b)(3)—Protected by other statutes

Exemptions (continued)



- (b)(4)—Trade secrets, commercial or financial information
- (b)(5)—Privileged information
- (b)(6)—Invasion of personal privacy
- (b)(7)—Law enforcement
- (b)(8)—Financial institutions
- (b)(9)—Wells

Processing Fees



- ★ **FOIA** statute allows government to charge fees for certain activities
 - Records Search
 - Duplication
 - Review
- ★ DD Form 2086, Record of Freedom of Information Processing Cost

OPEN Government Act of 2007



- ★ Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007:
 - The most recent amendment to FOIA
 - Signed by President Bush on December 31, 2007
 - Addresses range of administrative and procedural issues

Impact of Changes



★ OPEN Government Act of 2007:

- Section 3 - Protection of Fee Status for News Media
- Section 4 - Recovery of Attorney Fees and Litigation Cost
- Section 5 - Disciplinary Actions for Arbitrary and Capricious Rejections of Requests
- Section 6 - Time Limits for Agencies to Act on Requests
- Section 7 - Individualized Tracking Numbers for Requests and Status Information

Impact of Changes (continued)



- Section 8 - Reporting Requirements
- Section 9 - Openness of Agency Records Maintained by a Private Entity
- Section 10 - Office of Government Information Services
- Section 11 - Report on Personnel and Policies Related to FOIA
- Section 12 - Requirement to Describe Exemptions Authorizing Deletions of Material Provided under FOIA

Statute Relationships



- ★ Overlapping sectors and compliance requirements
 - **FOIA** exemptions for **NOT releasing** records
 - **Privacy Act** – Individual consent
 - **HIPAA** exceptions **TO allow the release** records
- ★ Emphasizes rights
 - **FOIA** – Public rights
 - **Privacy Act** – Privacy rights
 - **HIPAA** – Privacy rights

Statute Relationships (Continued)



- ★ Own definition of what constitutes a record
 - **FOIA** – Public records
 - **Privacy Act** – Personal records
 - **HIPAA** – Personal Health Information (PHI) records

Statute Relationships (Continued)



★ Fees for Record Processing

- **FOIA** costs may be charged back to the requestor
- **Privacy Act** direct cost of reproduction fees only
- **HIPAA** costs are not charged back to the requestor

★ Overlapping Sectors

- All three protect PHI
- Protect privacy rights of deceased differ
- Require timely responses to requestors

Summary



★ You now can:

- Explain the purpose of FOIA
- Outline FOIA request exemptions
- Understand the OPEN Government Act of 2007
- Explain what FOIA means to YOU

Activity



- ★ Diagnosis of FOIA Activity
(To Release or Not to Release)
 1. Phone Listing
 2. Organizational Chart
 3. Beneficiary Claims History
 4. TRICARE Operations Manual
 5. Request for Information